

EXHIBIT 4

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MDL NO. 2804

CASE NO. 17-md-2804

Hon. Dan A. Polster

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

TRACK THREE CASES

VOLUME I

REMOTE VIDEO DEPOSITION OF

JAMES RAFALSKI

(CONTAINS TESTIMONY DESIGNATED HIGHLY CONFIDENTIAL)

June 10, 2021

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Certified Realtime Reporter,

Registered Professional

Reporter and Notary Public

1 case, if you were to make that inquiry, you would
2 be talking to the corporate office of these
3 pharmacies because they are all -- this is a
4 self-distribution situation where all the
5 pharmacies are owned by the same company, correct?

6 A. I am speaking about Mr. Crowley and
7 his visit to Detroit.

8 Q. Right, yeah. Purdue is a
9 manufacturer, so it is just a completely different
10 situation, right?

11 A. Well, it is a distribution from a
12 distributor to a pharmacy. It is not a chain, but
13 it is the same business. But I will agree with
14 you.

15 Q. Let's get to the more important
16 paragraph, the next one. It says, "You may already
17 know this, but a general pharmacy average for
18 ordering the eighty milligram" -- you are referring
19 to Oxy here, right, eighty milligram product?

20 A. Yes.

21 Q. -- "is approximately three hundred to
22 one thousand dosages units per month. If any
23 pharmacy you visit is ordering a larger amount and
24 not proportionate to the OxyContin strengths, then
25 you might want to investigate the totals more in

1 | depth to ensure it is legitimate."

2 Do you see that?

3 A. Yes.

4 Q. So basically what you are telling
5 Mr. Crowley to be on the lookout for is, hey, if
6 you see that they are ordering, the pharmacy is
7 ordering more than a thousand doses, you know, it
8 is a red flag for you. And you might want to do
9 your due diligence to see if there really is
10 something amiss with the pharmacy, correct?

11 A. Conceptually, that would be a good
12 description of doing due diligence, by looking at
13 the distributions of strengths of drugs, I agree,
14 yes.

15 Q. Right. And conversely you are
16 telling Mr. Crowley that if the pharmacy has less
17 than a thousand dosage units per month, and
18 especially substantially less, then that shouldn't
19 raise his eyebrow, that would not be a red flag,
20 and he doesn't need to do any further due
21 diligence?

22 MS. KNIGHT: Object to form.

23 A. I don't think it would completely
24 preclude it, but generally speaking if it was much
25 less, a hundred couple dosage units a month, I

1 would tend to agree with that statement.

2 Q. (BY MR. LIVINGSTON:) Now I would
3 like you to turn to Exhibit 50.

4 (GE Exhibit 50 was marked for
5 identification.)

6 Q. (BY MR. LIVINGSTON:) And again, this
7 is something that our data consultants, using the
8 data that has been produced in this case, the OARRS
9 data, performed at our request. And this is
10 basically the average monthly oxycodone eighty
11 milligram dosage units dispensed by Overholts
12 Pharmacy. Do you know who Overholts Pharmacy is?

13 A. It's -- yes, generally speaking.

14 Q. Who is Overholts?

15 A. Well, it's an independent pharmacy.

16 I --

17 Q. And do you know what happened to
18 Overholts?

19 MS. KNIGHT: Mr. Livingston, you need
20 to let Mr. Rafalski finish his answer.

21 MR. LIVINGSTON: I'm sorry. I
22 thought he was finished. I'm just trying to move
23 it along.

24 MS. KNIGHT: Well, we've spent all
25 morning talking about areas that he doesn't have

1 opinions on. You can let him finish his answer.

2 A. I recall seeing it on one of
3 Dr. McCann's charts, and it's in either Lake or
4 Trumbull County. I know it was a high dispenser,
5 but other than that, I don't have any other
6 information now with regard to what happened with
7 that pharmacy.

8 Q. (BY MR. LIVINGSTON:) Well, Overholts
9 was eventually shut down and its owner sent to jail
10 for, you know, diverting opioids. But you see
11 there that Overholts is well above your one
12 thousand dosage units cutoff, correct?

13 A. It does -- the chart does say that.
14 If it's accurate, I agree.

15 Q. Yeah. So if you were investigating
16 Overholts, this would have been a red flag for you
17 that they were well above your cutoff, correct?

18 A. It would have definitely required
19 some scrutiny.

20 Q. Is okay. And if you -- do you know
21 who the Franklin Pharmacy is, where that
22 pharmacy --

23 A. I do not.

24 Q. Okay. That's another pharmacy that
25 had some issues; in fact, McKesson cut them off at

1 some point. And they were also an independent
2 pharmacy. And you see that they're also more than
3 double above your cutoff; do you see that?

4 A. I do. But just -- just for
5 clarification, I think my email to Mr. Crowley was
6 a couple of years earlier. And I'm not so sure
7 that as time went on, a thousand would have been --
8 a thousand a month would have been accurate, as
9 that use of that drug escalated rapidly, just
10 pointing that out to you.

11 Q. Well, are you saying that the number
12 would have gone up or down?

13 A. My number of a thousand would have
14 went up.

15 Q. Okay.

16 A. Early guidance that I received first
17 in Detroit would be oxycodone products. All
18 oxycodone products in the year would have probably
19 been under -- well, under probably ten thousand
20 when I first started.

21 Q. Okay. In any event, so are you
22 saying that maybe Franklin wouldn't have raised
23 your eyebrows if you had investigated Franklin
24 because the dosage cutoff was more than a thousand?

25 A. Just looking at the chart and seeing

1 those numbers, it would be outside of the norm, but
2 that doesn't mean that it's diverting or there's
3 some illicit conduct, although if it ranked high
4 compared to all other pharmacies, it bears some
5 scrutiny but there could be an explanation.

6 That's the essence -- interestingly,
7 that's the essence of due diligence is to determine
8 whether or not that the bar graphs like this are
9 legitimate or illegitimate dispensing.

10 Q. We don't need to talk about
11 nondefendants, but if we skip ahead, there's all
12 defendants and then there's Giant Eagle by its
13 lonesome. Do you see that all defendants is just a
14 small fraction of the thousand dosage units cutoff
15 that we've been speaking about?

16 A. Yes, but again, in this chart, we're
17 talking about the eighty milligrams hydrocodone --
18 or oxycodone tablets, so we had some other
19 activities that occurred during the time frame.
20 Had the reformulation of the oxycodone, OxyContin
21 eighty milligram. That caused a huge shift to the
22 thirty milligram oxycodone.

23 So there's other factors to
24 determine. Looking at this specific drug over this
25 wide time frame, it's concerning with the data that

1 we see there.

2 Q. But looking at this -- this metric
3 alone, if you were to have looked at all defendants
4 or Giant Eagles of dispensing of eighty milligram
5 oxy during this time frame, that would not have
6 raised any concerns on your part?

7 MS. KNIGHT: Object to the form.

8 A. I don't know that I would have ever
9 looked at it in this manner. Again, that's a
10 really wide time frame for the data, so I don't
11 know how the data would change if we looked at each
12 year.

13 I'm always cautious to just look at a
14 chart and make some kind of assumptions or
15 determinations. I mean Overholts generally -- I
16 mean, Overholts would be a concern, obviously. But
17 then I don't know what the time frame of
18 Overholts's conduct is.

19 So just clarifying, just looking at a
20 chart gives some indications, but it's not the
21 strength that I think you're trying to apply to it
22 in regards to the questions to me.

23 Q. (BY MR. LIVINGSTON:) Just turn to
24 the next page on this exhibit, there's another
25 chart, average monthly oxycodone eighty milligram